ORIGINAL

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re: Jamal Jbara,	)	
Debtor	)	
	)	Case No. 1-09-48496-dem
	)	Chapter 7
Address: 42-22 194th Street	)	
2nd Floor	)	
Flushing, NY 11358	)	
	)	
SSN: xxx-xx-7159	)	

COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBT

PLEASE TAKE NOTICE that Paul O'Dwyer, Esq., a creditor in the above bankruptcy petition, will move this Court before the Honorable Dennis E. Milton, United States Bankruptcy Judge, Court Room 3577, at 271 Cadman Plaza East, Brooklyn, New York, on February 2, 2010 at 2 p.m. or soon thereafter, for a hearing to determine dischargeability of debtor's debt owed to creditor Paul O'Dwyer. Creditor will rely in the attached brief and exhibits in support of his complaint. G.N.

Dated: New York, New York
January 4, 2010

Respectfully submitted,

PAUL O'DWYER, ESQ.
Creditor

To: Jamal Jbara
42-22 194th Street
2nd Floor
Flushing, NY 11358

BANKRUPTCY COURT EASTERN DISTRICT OF NEW YORK
2010 JAN -5 P 12: 21
RECEIVED

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re: Jamal Jbara, Debtor	)	
	)	Case No. 1-09-48496-dem Chapter 7
Address: 42-22 194th Street 2nd Floor Flushing, NY 11358	)	
SSN: xxx-xx-7159	)	

CREDITOR'S SUPPORTING BRIEF TO COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBT

I, Paul O'Dwyer, under penalty of perjury, affirm that:

1. I am the attorney for Jose Borges, who is the Plaintiff in a pending civil action against Jamal Jbara, captioned Borges v. Entra America, Ivan, Jbara and Placeres, New York City Civil Court, Index No. 530 TSN 2004. The Complaint was filed on August 3, 2004, and Mr. Jbara has appeared in the action, answered, and filed two motions for summary judgement, each of which has been denied.

2. The complaint asserts causes of action for negligence, breach of contract, legal malpractice, negligent and intentional infliction of emotional distress, fraud, breach of fiduciary duty, and a breach of New York Judiciary Law § 487 (prohibiting deceit of a party by an attorney regarding the status of his case) and seeks statutory and treble damages. An amended complaint was later filed, which adds additional facts and asserts the same causes of action.

3. With regard to Mr. Jbara, the complaint alleges in essence, that he failed to properly advise Mr. Borges regarding his immigration status, that he deliberately and intentionally

gave him false and misleading information about the status of his immigration case. Specifically, he alleges that Jbara lied to him about his eligibility for adjustment of status, and told him that he was not subject to an *in absentia* removal order, when in fact Jbara knew that he was. The complaint also alleges that Jbara counseled Mr. Borges to tell an immigration official that he was not subject to this removal (or deportation) order, when in fact Jbara knew that Borges was subject to this order. It also alleges that Jbara lied to Borges by stating that he (Jbara) had filed a motion to reopen the *in absentia* removal (deportation) order, when in fact he had not done so, that lied to Mr. Borges about who he was employed by, so that Mr. Borges believed Jbara worked for an immigration law firm when in fact he was a self-employed attorney with no experience in immigration law. The complaint further alleges that Jbara conspired with the other Defendants in that action to give false and misleading information to Mr. Borges, to cover up the wrongdoing of each other.

4. Successive summary judgment motions filed by Jbara have been denied on the basis that the case presents controverted issues of fact which cannot be resolved via summary judgment procedures.

5. Pursuant to the Bankruptcy Code, a discharge may not be granted for fraud or defalcation while acting in a fiduciary capacity. 11 U.S.C. § 523(a)(4). Attorney-client relationships establish a fiduciary relationship within the meaning of § 523(a)(4), Andy Warhol Foundation for Visual Arts v. Hayes, 183 F.3d 162, 34 BCD 976 (2nd Cir. 1999); this extends to all aspects of the attorney client relationship, including, but not limited to, fee agreements. id., 183 F.3d 170.

6. In this case, the allegations against Jbara in the Complaint and First Amended Complaint

support the various causes of action for negligence, breach of contract, malpractice, breach of fiduciary duty and fraud. Jbara has denied these allegations in the state court action and presumably will do so in this proceeding also. It thus seems that a hearing should be held to determine dischargeability of Mr. Borges' claims against Jbara. Alternatively, and more efficiently, the issue should be postponed until after the trial in that action, on which jury selection is scheduled for January 26, 2010.

Dated: New York, New York
January 4, 2010

Paul O'Dwyer, Esq.

State of New York }
}Ss.:
County of New York }

AFFIDAVIT OF SERVICE

I, Guillermo A. Nolivos, being duly sworn, hereby depose and say: that on the 5th day of January, 2010, I served a copy of the within Complaint to Determine Dischargeability of Certain Debt and attached exhibits on:

Jamal Jbara
42-22 194th Street
2nd Floor
Flushing, NY 11358

by depositing a true copy thereof enclosed in a pre-paid envelope, in an official depository under the exclusive care and custody of the U.S. Postal Service for First Class Mail delivery at the above address

Guillermo A. Nolivos

Subscribed and sworn to before me
on January 5, 2010

Notary Public

PAUL O'DWYER
Notary Public, State of New York
No. 02OD5037266
Qualified in New York County
Commission Expires Feb. 14, 2010

INDEX TO EXHIBITS

Exhibit A. Copy of Summons with Notice and Verified Complaint filed with the New York State Supreme Court, County of New York on August 4, 2005, matter of Borges v. Entra-America, Ivan, Jbara and Placeres, Index No. 530 TSN 2004

Exhibit B. Copy of First Amended Complaint;

Exhibit C. Copy of Verified Answer by Jamal Jbara;

Exhibit D. Copy of a Decision from the Civil Court of the City of New York, County of New York, denying Mr. Jbara's motion to dismiss the above civil action; and,

Exhibit E. Copy of a Decision and Order from the Civil Court of the City of New York, County of New York, denying Mr. Jbara's motion for summary judgment on the above civil action

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX-
JOSE BORGES,

Plaintiff

-against-

ENTRA AMERICA, INCORPORATED
ADELA IVAN
ALFRED PLACERES
JAMAL JBARA,

Defendants.
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX-

SUMMONS
Index Number:
03/114016

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to appear in this action, and to serve a Notice of Appearance, and/or a Demand for a Complaint, on Plaintiff's Attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York).

PLEASE TAKE NOTICE that the object of this action is to recover damages for Legal Malpractice, Breach of Contract, Fraud, Breach of Fiduciary Duty, and Negligent and Intentional Infliction of Emotional Distress.

PLEASE TAKE FURTHER NOTICE that in case of your failure to appear, judgment will be taken against you by default for the sum of two hundred and fifty thousand dollars, plus the costs and disbursements of this action.

The action will be heard in the Supreme Court of the State of New York, in the County of New York. This action is brought in the County of New York because it is the County where the acts complained of occurred.

Date Summons Filed with Clerk of the Court: August 4, 2003.

Paul O'Dwyer, Esq.
Attorney for Plaintiff
134 West 26 Street, Suite 902
New York, New York 10001
Telephone: (646) 230-7444

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX-

JOSE BORGES,

Plaintiff

-against-

VERIFIED COMPLAINT
Index Number: 03/114016

ENTRA AMERICA, INCORPORATED
ADELA IVAN
ALFRED PLACERES
JAMAL JBARA,

Defendants.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX-

Plaintiff, Jose Borges, by his attorney Paul O'Dwyer, Esq., for his complaint against the Defendants, respectfully alleges:

THE PARTIES

1. Plaintiff is a resident of the City and State of New York.

2. At all times hereinafter mentioned on information and belief, Defendant Alfred Placeres ("Placeres") was an attorney, duly admitted to practice law in the State of New York. Defendant Placeres maintains his office and principal place of business at 2710 Broadway, New York, New York 10025.

3. At all times hereinafter mentioned on information and belief, Defendant Jamal Jbara ("Jbara") was an attorney, duly admitted to practice law in the State of New York. Defendant Jbara maintains his office and principal place of business at 1133 Broadway, Suite 908, New York, New York 10010.

4. At all times hereinafter mentioned Defendant Entra America, Inc. ("Entra") was a business corporation, duly incorporated pursuant to the laws of the State of New York. Defendant Entra maintains its office and principal place of business at 1133 Broadway, Suite 908, New York, New York 10010.

5. On information and belief, Defendant Entra's regular course of business is to provide immigration and related services to immigrants and prospective immigrants to the United States. Said services include, but are not limited to, the preparation and filing of

NEW YORK COUNTY CLERK'S OFFICE
DEC 18 2007
NOT COMPARED WITH COPY FILE

immigration forms, providing legal advice on immigration matters, and representation of clients at immigration hearings.

6. At all times hereinafter mentioned Defendant Adela Ivan, was chair and/or chief executive officer of Defendant Entra, and maintains her office and principal place of business at 1133 Broadway, Suite 908, New York, New York 10010.

7. At all times hereinafter complained of, and continuing to the present day, all Defendants acted in concert and conspired with one another to cause the acts and omissions complained of herein.

THE FACTS

8. Plaintiff is a native and citizen of Venezuela, who entered the United States on February 12, 1996. On August 12, 1997, Plaintiff was served with a Notice to Appear at the U.S. Immigration Court in Newark, New Jersey, to answer charges that he had illegally overstayed the terms of his admission to the United States and was therefore deportable. After a number of adjournments, Plaintiff's Immigration Court hearing was adjourned to January 28, 1998.

9. On or about January 10, 1998, pursuant to an oral agreement, Plaintiff hired Defendant Entra to represent him in his green card application, the basis of which was his planned marriage to Ms. Jolie LaMarca, Plaintiff's girlfriend at the time. Plaintiff paid to Defendants Entra and/or Ivan a total of $2,280 for such representation, which included representation by Defendants Placeres and Jbara.

10. The offices of Defendant Entra, located at 1133 Broadway, Suite 908, New York, New York, in January of 1998 and at all material times subsequently, displayed diplomas and certificates of Defendant Placeres on the wall, with the deliberate intention of leading Plaintiff to assume that Defendant Placeres was employed by Defendant Entra and would be performing legal services for the clients of Entra, including Plaintiff.

11. At all material times herein, Defendant Ivan held herself out as the owner and sole representative of Entra, and induced Plaintiff to hire the services of Entra by intentionally

leading Plaintiff to believe that Defendant Placeres would perform all the legal work necessary on his immigration case. At no point did Plaintiff ever meet with or speak with Defendant Placeres, either in person or on the telephone, even though Defendant Placeres was to act as Plaintiff's attorney, and despite numerous and repeated requests by Plaintiff to speak with Defendant Placeres.

12. At all material times herein Defendant Ivan claimed to speak on behalf of Defendant Placeres and claimed to be conveying legal advice from Defendant Placeres to Plaintiff. Upon information and belief, the express and implied representation made by Entra regarding Defendant Placeres referred to in Paragraphs 11 and 12 and elsewhere in this Complaint were made with the knowledge, consent, cooperation and encouragement of Defendant Placeres.

13. Upon information and belief, Defendant Placeres did, in fact, perform certain legal services on behalf of the clients of Defendant Entra and received reimbursement from Entra and/or Defendant Ivan for providing such services. In addition, Defendant Placeres received reimbursement for allowing Defendant Entra to use his name in attracting clients.

14. Upon information and belief, Defendants Ivan and/or Entra routinely forged the signature of Defendant Placeres to Plaintiff's immigration and other legal documents, with the knowledge and consent of Defendant Placeres. Defendant Placeres routinely signed Plaintiff's immigration and other legal documents which had been prepared by Defendant Entra without reviewing the said documents and without regard to whether or not the documents in question were legally sufficient or factually accurate.

15. Upon information and belief, Defendant Placeres received reimbursement from Defendant Entra in exchange for allowing his signature to be used in the manner alleged in Paragraph 15, above.

16. On January 20, 1998, Defendant Placeres filed a Notice of Appearance (as Plaintiff's attorney) and a Motion with the Immigration Court in New Jersey seeking a change in

venue to New York on the basis that Plaintiff's residence was in New York. That Motion failed to mention that Plaintiff would imminently marry his U.S.-citizen girlfriend, who intended to sponsor Plaintiff for a green card, and failed to seek an adjournment of the pending immigration court proceedings to allow Plaintiff to file the necessary papers for his green card. Plaintiff was not eligible for any other type of immigration relief apart from this sponsorship.

17. Before January 27, 1998, the return date for the change in venue motion, Defendant Ivan advised Plaintiff that Defendant Placeres would not appear in Immigration Court on his behalf and instructed Plaintiff to appear pro se for the motion.

18. On January 27, 1998, pursuant to the advice given to him by Defendants Ivan and Entra and Placeres, Plaintiff appeared in Immigration Court pro se. The Immigration Court denied the Motion for a Change in Venue and informed Plaintiff that he had to return to Immigration Court with his attorney on February 3, 1998 or else be deported.

19. On the same day, January 27, 1998, immediately after his Immigration Court appearance, Plaintiff spoke with Defendant Ivan, who informed Plaintiff that it was not necessary for him to return to Immigration Court on February 3. Plaintiff asked to talk with Defendant Placeres, but Defendant Ivan told him that it was not possible for him to speak with Defendant Placeres at that time, but that Defendant Placeres would not go to Court with him on February 3, 1998.

20. Despite numerous attempts by Plaintiff during all of the times referred to herein, he was never able to speak with Defendant Placeres. However, during the times referred to herein, Defendant Ivan repeatedly and consistently informed Plaintiff that she had "just spoken" with Defendant Placeres and that she (Ivan) was relaying his (Placeres') legal advice to Plaintiff.

21. On January 29, 1998, Plaintiff married Ms. LaMarca, and they remain married. On or about February 2, 1998, pursuant to the instructions of Defendants Ivan and Entra, Plaintiff completed all necessary application forms for his green card application and

gave them to Defendant Ivan, at the offices of Defendant Entra, along with checks for the appropriate filing fees, with the intention and understanding that they would be filed the same day. Unbeknownst to Plaintiff, his green card application was not filed until March 2, 1998, when Defendants caused it to be filed at the local INS district office located at 26 Federal Plaza, New York, New York.

22. On the same day, February 2, 1998, Defendant Ivan, during a meeting with Plaintiff and his wife, informed them that she had spoken on numerous occasions with Defendant Placeres and that he had informed her that it was neither necessary nor advisable for Plaintiff to return to court the following day. In fact, Defendant Ivan informed Plaintiff that if he returned to Immigration Court on February 3, the Immigration Judge would order him deported, but that if he (Plaintiff) did not show up in Immigration Court the Immigration Judge could not order him deported because of his marriage to Ms. LaMarca.

23. On February 3, 1998, the Judge at the Immigration Court in Newark ordered Plaintiff deported to Venezuela in his absence.

24. In early April of 1998, Plaintiff received a letter from the INS telling him to present himself at the Hemisphere Center in Newark, New Jersey for deportation to Venezuela. Plaintiff immediately contacted Defendant Ivan who told Plaintiff that Defendant Placeres had advised the relevant INS officers that Plaintiff had an adjustment of status application pending. Defendant knew this to be untrue. Defendant Ivan further informed Plaintiff that he could ignore the letter from Immigration as Defendant Placeres had completely resolved the problem.

25. On April 25, 1998 Defendant Placeres filed a motion with the Immigration Court in Newark, New Jersey, seeking to vacate the *in abstentia* order, solely on the basis that the denial of the motion for a change of venue was incorrect. Defendant Placeres failed to mention in his motion to reopen the *in abstentia* order that Plaintiff was married to a U.S. citizen and that he had filed an application for a green card based on that marriage.

26. Upon information and belief, had Defendant Placeres explained, in his motion to reopen, that Plaintiff was married to an US citizen and had filed an application for a green card, the motion to reopen would be granted.

27. By Decision dated June 10, 1998, the Immigration Court denied Defendant Placeres' Motion to Reopen. That decision was not served on Plaintiff, and it was served by mail upon Defendant Placeres who failed to inform Plaintiff that a decision had been rendered or that the Motion to Reopen had been denied.

28. The immigration law in effect at that time provided that an adjustment of status petition for an alien who was already in deportation proceedings could only be filed with the immigration court having jurisdiction over the alien's case and not with the local INS office. In addition the immigration law at the time provided clearly that a denial of a motion for a change in venue was not a basis for reopening an *in abstentia* order for deportation.

29. On July 20, 1999, Plaintiff was issued employment authorization by the INS, and on February 2, 2000 he and his wife attended an adjustment of status interview at 26 Federal Plaza, New York, New York. Subsequently, Plaintiff obtained employment as a chemical engineer , and in May 2003, Plaintiff was terminated from this position because he did not have employment authorization. Plaintiff has not been able to obtain comparable employment since then, because he does not have employment authorization.

30. Prior to the February 2, 2000 interview at 26 Federal Plaza, Plaintiff went to the offices of Defendant Entra at 1133 Broadway, New York, New York to prepare for his pending immigration interview. At that time, Plaintiff then met for the very first time with Defendant Jbara, who told Plaintiff he would represent him during the green card interview. Defendant Jbara worked from the same office as Defendant Entra and Plaintiff's immigration file had been given to Jbara by either Defendant Ivan and/or Entra America or Defendant Placeres. There was no written retainer agreement between Plaintiff and Jbara, and Jbara deliberately and intentionally led Plaintiff to believe that he

(Jbara) was acting as an agent and/or employee of Defendant Entra and/or Placeres at all times.

31. At no time did Defendants Placeres, Entra and/or Ivan seek Plaintiff's consent to hand over Plaintiff's immigration file to Defendant Jbara and accordingly Plaintiff assumed that legal representation was still being provided to him at least in part, by Defendant Placeres.

32. Defendant Jbara advised Plaintiff that it was not necessary to mention his previous immigration court case during this pending interview, as the order of deportation had already 'been taken care of" by Defendant Placeres. Accordingly, during the February 2, 2000 interview, Plaintiff when asked, informed the immigration officer that he had never been in deportation proceedings. Defendant Jbara was present throughout that interview and did not intervene to correct this error. At the conclusion of the interview, the immigration officer granted Plaintiff's adjustment of status application and put a stamp to that effect in Plaintiff's passport, and told him that he would receive his green card in the mail.

33. On or about April 2000, Plaintiff contacted Defendant Jbara by telephone and told him that he needed to travel to Venezuela immediately because his mother was severely ill, and that he wanted to be sure that he could re-enter the US with just the stamp in his passport. Plaintiff had not received his green card in the mail. Defendant Jbara informed Plaintiff that he could not leave the country because the *in abstentia* order was still in effect and the stamp on his passport would therefore be insufficient to gain reentry to the U.S. This was the first time that Plaintiff was made aware that the *in abstentia* order had not been vacated. On or about May 10, 2000 Plaintiff and Defendant Jbara returned to 26 Federal Plaza and informed the interviewing officer, Mr. Shaw, that Plaintiff had previously been in deportation proceedings. The stamp on Plaintiff's passport was then voided "without prejudice" and the immigration officer advised Plaintiff that the case would be transferred to New Jersey, where he could re-file his adjustment of status

application.

34. On or about May 2000, subsequent to the meeting at 26 Federal Plaza, Plaintiff paid Mr. Jbara to file a motion to vacate the Order of Deportation. Mr. Jbara failed to file such a motion, but repeatedly informed Plaintiff that such a motion was pending and that he was awaiting a decision. Plaintiff was not made aware until July 2002, when he retained different immigration counsel, that a motion to reopen had never been filed.

35. Defendant Jbara did, in fact, write to the District Counsel (the legal representatives of the INS in immigration court), requesting that the District Counsel consent to a motion to reopen so that Plaintiff could file to adjust his status in the Immigration Court. The proposed Motion to Reopen and the said letter stated no legal basis on which the Motion might be granted, and gave no legal argument in support of the Motion. In particular, the Motion and the letter failed to mention a possible claim of ineffective assistance of counsel on the part of Mr. Placeres as a legal basis for the Motion to Reopen to be granted. In addition, Defendant Jbara failed to advise Plaintiff that such a claim (based on ineffective assistance of counsel) was the only legal basis on which he might seek reopening of the *in abstentia* order.

36. Defendant Jbara failed to advise Plaintiff regarding possible claims of ineffective assistance of counsel due to a conflict of interest arising from his business and professional affiliations with the other Defendants. Defendant Jbara also failed to advise Plaintiff that he (Jbara) had such a conflict of interest.

37. Defendants took no other steps to vacate the *in abstentia* order.

38. As a result of the failure of Defendants Entra, Ivan and Placeres to properly represent him, Plaintiff became subject to an *in abstentia* order of deportation.

39. As a result of the failure of Defendants Placeres and Jbara to properly represent Plaintiff, Plaintiff was not advised that he was still subject to an *in abstentia* order of deportation and was subsequently unable to travel to Venezuela for either of his parents' funerals, which caused him emotional distress.

40. As a result of the failure of Defendants to properly represent Plaintiff, Plaintiff missed the filing deadlines within which to file a motion to vacate an *in abstentia* order of deportation.

41. As a result of the actions of all Defendants, Plaintiff was unable to renew his employment authorization and was terminated from his position as an engineer, and was denied further job opportunities.

42. As a result of the actions of all Defendants, Plaintiff was placed in and remains in danger of deportation to Venezuela.

43. As a result of the actions of all Defendants, Plaintiff has had to retain another attorney and incur legal fees in order to resolve his immigration status.

44. The representation of Plaintiff by Defendant Placeres, being provided through Defendant Entra, was never terminated and continued until June of 2002.

AS AND FOR A FIRST CAUSE OF ACTION:

NEGLIGENCE

45. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 44 as if set forth more fully herein.

46. Defendants Jbara and Placeres were attorneys representing Plaintiff regarding his immigration status and, as such, maintained a fiduciary relationship with the Plaintiff with an attendant high standard of care that included, among other things, a duty of complete disclosure.

47. Each of the Defendants recklessly and negligently gave wrong and misleading information that they knew and should have known to be false, to the Plaintiff regarding his immigration case.

48. Each of the Defendants negligently permitted, encouraged and facilitated the other Defendants to provide wrong and misleading information to Plaintiff regarding the status of his immigration case.

49. Defendant Jbara knew or should have known that Defendants Entra America, Ivan and

Placeres had given Plaintiff incorrect, and misleading information and advice about the status of his immigration case. Defendant Jbara failed to inform Plaintiff of this wrong and misleading information and advice.

50. In attempting to insulate his co-defendants from liability, Defendant Jbara recklessly and negligently failed to properly advise Plaintiff on the necessity of seeking to vacate the *in abstentia* Order of Deportation.

51. The actions of the Defendants complained of herein constituted negligence.

52. As a result of this violation of their fiduciary obligations to him, Plaintiff has sustained damage in the amount of $750,000 by each of the Defendants.

AS AND FOR A SECOND CAUSE OF ACTION:

LEGAL MALPRACTICE

53. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 52 as if set forth more fully herein.

54. Defendant Placeres and Jbara had a duty to exercise the ordinary reasonable care and knowledge commonly possessed by a member of the legal profession in fully attending to Plaintiff's interests.

55. Defendants Placeres and Jbara failed to exercise such care, ordinary and reasonable skill, diligence and knowledge during the course of their representation of Plaintiff. In particular, Defendants failed to file Plaintiff's adjustment of status application in a timely manner and in the proper forum, and did not attempt to remedy that failure.

56. As a result of the actions and inactions of the Defendants complained of herein, Plaintiff remains in imminent danger of deportation to Venezuela; has been terminated from his position as a chemical engineer and has not been able to obtain comparable employment; has been denied job opportunities; may ultimately be forced to leave the US and return to Venezuela; has suffered loss of reputation; has incurred legal fees; and continue suffering other damages.

57. As a result of this malpractice by Defendants, Plaintiff has sustained damage in the

amount of $1,250,000 by each of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION:

BREACH OF CONTRACT

58. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 56 as if set forth more fully herein.

59. The Defendants each entered into a contract with the Plaintiff to secure certain legal rights for him in exchange for stated fees; Defendants breached said contract as they failed to perform their obligation pursuant thereto.

60. The actions of the Defendants complained of herein constituted a breach of the oral and implied contract between Plaintiff and each of the Defendants.

61. As a result of this breach of contract, Plaintiff has been damaged in the amount of $500,000 by each of the Defendants.

AS AND FOR A FOURTH CAUSE OF ACTION:

NEGLIGENT SUPERVISION

62. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 59 as if set forth more fully herein.

63. Defendants Placeres and Jbara acted as employees, agents or servants of Defendants Entra and/or Ivan at all material times herein.

64. Defendant Entra knew or should have known that Defendants Placeres and Jbara were not qualified to represent Plaintiff as attorneys, and, knowing such, failed to properly oversee and train them.

65. As a result of the improper training and supervision of Defendants Placeres and Jbara by Defendants Entra and/or Ivan, Plaintiff suffered the injuries complained of herein and has sustained damage in the amount of $250,000 by each of the Defendants.

AS AND FOR A FIFTH CAUSE OF ACTION:

INTENTIONAL AND NEGLIGENT INFLICT OF EMOTIONAL DISTRESS

66. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 62 as if set

forth more fully herein.

67. The actions of all Defendants complained of herein constituted both intentional and negligent infliction of emotional distress against the Plaintiff.

68. As a result of the said emotional distress, Plaintiff has been damaged in the amount of $500,000 by each of the Defendants.

AS AND FOR A SIXTH CAUSE OF ACTION:

FRAUD

69. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 69 as if set forth more fully herein.

70. Defendants made statements to Plaintiff regarding his immigration status, which they knew to be false, with the intent that Plaintiff rely on said statements. Defendants also failed to inform Plaintiff about the status of his immigration case with the specific intention of misleading Plaintiff about his immigration case.

71. Defendants Entra and/or Ivan deliberately misrepresented to Plaintiff that Defendant Placeres would be performing legal work on Plaintiff's behalf.

72. Plaintiff did rely on said false statements and did not pursue legal actions available to him that would have ameliorated his immigration status, to his detriment and damage.

73. Such fraudulent conduct on the part of all Defendants continued at least until July 2002, when it was first discovered by Plaintiff.

74. Such fraud was perpetrated upon the Plaintiff by each of the Defendants intentionally, willingly and with full knowledge.

75. As a result of the said fraudulent conduct of each of the Defendants, Plaintiff has been damaged in the amount of $500,000 by each of the Defendants.

AS AND FOR A SEVENTH CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

76. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 68 as if set forth more fully herein.

77. The actions of all Defendants complained of herein constituted a breach of the fiduciary duty owed to Plaintiff by all Defendants.

78. As a result of the said breach of fiduciary duty, Plaintiff has been damaged in the amount of $500,000 by each of the Defendants.

AS AND FOR AN EIGHTH CAUSE OF ACTION:

STATUTORY TREBLE DAMAGES

79. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 65 as if set forth more fully herein.

80. New York Judiciary Law § 487 provides in pertinent part:

An attorney or counselor who:

(1) is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the Court, or any party; or

(2) willfully delays his client's suit with a view to his own gain; or willfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

81. Defendants Placeres and Jbara engaged in a course of conduct, calculated to intentionally deceive Plaintiff about the status of his immigration case, conspired and colluded with each other and Defendants Entra and Ivan to deceive Plaintiff about the status of his immigration case and to give Plaintiff wrong and misleading legal advice, in order to protect themselves and each other, and each of the Defendants herein consented to this deceit, conspiracy and collusion by the other.

82. That pursuant to Judiciary Law § 487, Defendants Placeres and Jbara are in violation of said law and each should forfeit treble damages to the Plaintiff herein.

AS AND FOR A NINTH CAUSE OF ACTION:

PUNITIVE DAMAGES

83. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 75 as if set forth more fully herein.

84. The actions of each of the Defendants herein was intentional or grossly negligent, reckless and wanton and with conscious disregard for the rights of Plaintiff.

85. Each of the Defendants is liable to the Plaintiff for punitive damages on each of the causes of action alleged above.

WHEREFORE Plaintiff demands judgment against each of the Defendants in an amount of $750,000 on the first cause of action; $1,250,000 on the second cause of action; $500,000 on the third cause of action; $250,000 on the fourth cause of action; $500,000 on the fifth cause of action; $500,000 on the sixth cause of action along with costs and disbursements, treble damages pursuant to Judiciary Law § 487, punitive damages, and attorney fees, and for such other and further relief as this Court shall deem just and appropriate.

Dated: New York, New York
November 17, 2003

By:
Paul O'Dwyer, Esq.
Attorney for Plaintiff
134 West 26 Street, Suite 902
New York NY 10001
(646) 230-7444

VERIFICATION

Jose Borges, being duly sworn, deposes and says:

I am the Plaintiff in the within action. I have read the annexed Complaint and I know the contents thereof, and the same is true to my knowledge, except those matters which are stated to be alleged on information and belief and as to those matters I believe them to be true.

Dated: New York, New York
November 17, 2003

Jose Borges

Sworn to before me,
a notary, on this the 17 day of
November, 2003:

PAUL O'DWYER
Notary Public, State of New York
No. 02OD6037266
Qualified in New York County
Commission Expires Feb. 14, 2006

EXHIBIT B

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

---x

JOSE BORGES,

Plaintiff,

Index No. 530TS04

- against -

FIRST AMENDED COMPLAINT

ENTRA AMERICA, INCORPORATED,
ADELA IVAN,
ALFRED PLACERES, and
JAMAL JBARA,

Defendants.

---x

2005 FEB -1 PM 1:50
CIVIL COURT
SPECIAL TERM
NEW YORK COUNTY
(copy)

Plaintiff, Jose Borges, by his attorney Paul O'Dwyer, Esq., for his complaint against the Defendants, respectfully alleges:

THE PARTIES

1. Plaintiff is a resident of the City and State of New York.

2. At all times hereinafter mentioned on information and belief, Defendant Alfred Placeres ("Placeres") was an attorney, duly admitted to practice law in the State of New York. Defendant Placeres maintains his office and principal place of business at 2710 Broadway, New York, New York 10025.

3. At all times hereinafter mentioned on information and belief, Defendant Jamal Jbara ("Jbara") was an attorney, duly admitted to practice law in the State of New York. Defendant Jbara maintains his office and principal place of business at 1133 Broadway, New York, New York 10010.

4. At all times hereinafter mentioned Defendant Entra America, Inc. ("Entra") was a business corporation, duly incorporated pursuant to the laws of the State of New York, maintaining its office and principal place of business at 1133 Broadway, Suite 908, New York, New York 10010.

5. On information and belief, Defendant Entra's regular course of business was to provide immigration and related services to immigrants and prospective immigrants to the United States. Said services included, but were not limited to, the preparation and filing of

immigration forms, providing legal advice on immigration matters, and representation of clients at immigration hearings.

6. Defendant Adela Ivan, was chair and/or chief executive officer and sole owner of Defendant Entra, and maintained her office and principal place of business at 1133 Broadway, Suite 908, New York, New York 10010.

7. Defendant Ivan's current usual place of abode is 62 Butman Road, Lowell MA 01852. Up to May of 2005, Defendant Ivan's usual place of abode was 2510 Yates Avenue, Bronx, New York.

8. At all times hereinafter complained of, and continuing to the present day, all Defendants acted in concert and conspired with one another to cause the acts and omissions complained of herein.

9. The allegations in this Complaint refer to Defendants Entra and Ivan interchangeably.

THE FACTS

10. Plaintiff is a native and citizen of Venezuela, who entered the United States on February 12, 1996. On August 12, 1997, Plaintiff was served with a Notice to Appear at the U.S. Immigration Court in Newark, New Jersey, to answer charges that he had illegally overstayed the terms of his admission to the United States and was therefore deportable. After a number of adjournments, Plaintiff's Immigration Court hearing was continued to January 28, 1998. Prior to being placed in removal proceedings, Plaintiff had always maintained lawful status in the US and had never remained without authorization in the US past the period of his admission.

11. On or about January 10, 1998, pursuant to an oral agreement, Plaintiff hired Defendant Ivan, as the president of Defendant Entra America, to represent him in his immigration proceedings, which included representation before the immigration court as well as an application for a green card based on Plaintiff's planned marriage to Ms. Jolie LaMarca, his girlfriend at the time. Plaintiff paid Entra a total of $2,280 for such representation, between January 1998 and May 2000 (Exhibit B).

12. Ivan told Plaintiff that she was a paralegal employed by Defendant Alfred Placeres, Esq., a well-known immigration attorney. Ivan gave Plaintiff a business card for Entra America, which had Ivan's name ("Adela Ivan, Presidentl") and Placeres' name ("Alfred Placeres, Esq.') (Exhibit A). Plaintiff therefore believed that Defendant Placeres was employed by Defendant Ivan and/or Entra.

13. In January of 1998 and at all material times subsequently, offices of Defendant Entra, located at 1133 Broadway, Suite 908, New York, New York, displayed diplomas and certificates of Defendant Placeres on the wall, with the deliberate intention of leading Plaintiff and others to assume that Defendant Placeres was employed by Defendants Ivan and/or Entra and would be performing legal services for the clients of Entra, including Plaintiff.

14. At all material times herein, Defendant Ivan held herself out as the owner and sole representative of Entra, and induced Plaintiff to hire the services of Entra by intentionally leading Plaintiff to believe that Defendant Placeres would perform all the legal work necessary on his immigration case. At no point did Plaintiff ever meet with or speak with Defendant Placeres, either in person or on the telephone, even though Defendant Placeres was to act as Plaintiff's attorney, and despite numerous and repeated requests by Plaintiff to speak with Defendant Placeres.

15. At all material times herein Defendant Ivan claimed to speak on behalf of Defendant Placeres and claimed to be conveying legal advice from Defendant Placeres to Plaintiff. Upon information and belief, the express and implied representation made by Entra regarding Defendant Placeres referred to in Paragraphs 12 through 15 and elsewhere in this Complaint were made with the knowledge, consent, cooperation and encouragement of Defendant Placeres.

16. Upon information and belief, Defendant Placeres received reimbursement for allowing Defendant Entra to use his name in attracting clients.

17. Upon information and belief, Defendant Ivan routinely forged the signature of Defendant

Placeres to Plaintiff's immigration and other legal documents, with the knowledge and consent of Defendant Placeres.

18. Upon information and belief, Defendant Placeres received reimbursement from Defendants Ivan and/or Entra in exchange for allowing his signature to be used in the manner alleged in Paragraph 17, above.

19. On January 20, 1998, a Notice of Appearance, indicating that Placeres was Plaintiff's immigration attorney, was filed with the Immigration Court in Newark, New Jersey. This Notice of Appearance was signed, purportedly by Placeres, and indicated that his (Placeres') office address was P.O. Box 7806, FDR Station, New York NY 10150-1915, and gave the Entra America telephone phone number as Placeres' office phone number. All of the immigration forms filed on Plaintiff's behalf gave this P.O. Box as Placeres' office address. However, this P.O. Box was not rented by Placeres, but by Ivan.

20. This Notice of Appearance was filed along with a Motion, returnable on January 27, 1998, seeking a change in venue to from New Jersey New York on the basis that Plaintiff's residence was in New York. That Motion failed to mention that Plaintiff would imminently marry his U.S.-citizen girlfriend, who intended to sponsor Plaintiff for a green card, and failed to seek an adjournment of the pending immigration court proceedings to allow Plaintiff to file the necessary papers for his green card. Plaintiff was not eligible for any other type of relief from removal (deportation) from the US apart from this sponsorship by his then-fiancé.

21. Shortly prior to the January 27, 1998 Immigration Court date, Defendant Ivan advised Plaintiff that Defendant Placeres would not appear in Immigration Court on his behalf on January 27, 1998, and instructed Plaintiff to appear pro se for the motion. Defendant Ivan further informed Plaintiff that Defendant Placeres had informed her that the motion for a change in venue would be granted as a matter of course, and that it was unnecessary for him (Placeres) to appear.

22. On January 27, 1998, acting pursuant to the advice given to him by Ivan, and, he

believed, by Placeres, Plaintiff appeared in Immigration Court pro se. The Immigration Court denied the Motion for a Change in Venue and informed Plaintiff that he had to return to Immigration Court with his attorney on February 3, 1998 or else be deported.

23. On the same day, January 27, 1998, immediately after his Immigration Court appearance, Plaintiff spoke with Defendant Ivan, who informed Plaintiff that it was not necessary for him to return to Immigration Court on February 3. Plaintiff asked to talk with Defendant Placeres, but Defendant Ivan told him that it was not possible for him to speak with Defendant Placeres at that time, and also that Defendant Placeres would not go to Court with him on February 3, 1998.

24. Despite numerous attempts by Plaintiff during all of the times referred to herein, he was never able to speak with Defendant Placeres. However, during the times referred to herein, Defendant Ivan repeatedly and consistently informed Plaintiff that she had "just spoken" with Defendant Placeres and that she (Ivan) was relaying his (Placeres') legal advice to Plaintiff.

25. On January 29, 1998, Plaintiff married Ms. LaMarca, and they remain married. On or about February 2, 1998, pursuant to Ivan's instructions, Plaintiff and his wife completed all necessary forms for his green card application and gave them to Ivan, at the Entra offices, along with checks for the appropriate filing fees, with the intention and understanding that they would be filed the same day. Unbeknownst to Plaintiff, his green card application was not filed until March 2, 1998, when Ivan filed it at the local INS district office located at 26 Federal Plaza, New York, New York.

26. Also on February 2, 1998, Ivan informed Plaintiff and his wife that she (Ivan) had spoken on numerous occasions with Defendant Placeres and that he had informed her that it was neither necessary nor advisable for Plaintiff to return to Immigration Court the following day. Defendant Ivan informed Plaintiff that if he returned to Immigration Court on February 3, the Immigration Judge would order him deported, but that if he (Plaintiff) did not show up in Immigration Court the Immigration Judge could not order him deported

because of his marriage to Ms. LaMarca. Ivan had repeated this information to Plaintiff on several occasions between January 27 and February 3, 1998.

27. Because Plaintiff was in removal proceedings, only the immigration court had jurisdiction to adjudicate Plaintiff's adjustment of status petition. Ivan failed to inform Plaintiff of this fact, because of ignorance.

28. Plaintiff did not appear for his Immigration Court hearing on February 3, 1998, solely as a result of the advice given him by Ivan, which advice, he believed, had been dispensed by Placeres. Prior to February 2, 1998 and prior to the time he hired Ivan and Entra, Plaintiff had never missed any of his scheduled immigration appointments. Because of his non-appearance on February 2, 1998, the Judge at the Immigration Court in Newark entered an *in absentia* order of removal ("the *in absentia* order"), directing that Plaintiff be deported to Venezuela in his absence. A copy of this order was served by mail by the Immigration Court at the P.O. Box address given in the Notice of Appearance as the address for Placeres, Plaintiff's immigration court attorney of record. Neither Placeres nor Ivan informed Plaintiff that this *in absentia* order had been issued.

29. In early April of 1998, Plaintiff received a letter from the INS telling him to present himself at the Hemisphere Center in Newark, New Jersey for deportation to Venezuela. This was the first time Plaintiff became aware that he had been ordered removed to Venezuela. Plaintiff immediately contacted Defendant Ivan and told her that he had received this letter. Ivan then informed Plaintiff that Defendant Placeres had advised the relevant INS officers that Plaintiff had an adjustment of status application pending. Defendant Ivan knew this statement to be untrue. Ivan further informed Plaintiff that he could ignore the letter from Immigration, as Placeres had completely resolved the problem.

30. On April 25, 1998 another motion ("A Motion to Reopen to Reconsider") was filed with the Immigration Court in Newark, New Jersey, purportedly by Placeres, seeking to vacate the *in absentia* order, solely on the basis that the denial of the motion for a change of

venue was incorrect. Pursuant to prevailing law at the time, a Motion to Reopen an *in absentia* order of removal was required to state the reason for the non-appearance at the Immigration Court hearing and also to state the alien's eligibility for relief from removal. This Motion did not provide any explanation for Plaintiff's non-appearance in Immigration Court on February 2, 1998, and did not mention that Plaintiff was eligible for relief from removal based on his marriage to a U.S. citizen, or that he had filed an application for a green card based on that marriage. A copy of this Motion is annexed hereto as Exhibit E.

31. Had this Motion explained that Plaintiff was married to an US citizen and had filed an application for a green card, and that his failure to appear was because of the advice he had received from the person he believed was his attorney (i.e., ineffective assistance of counsel) the motion to reopen would have been granted.

32. By Decision dated June 10, 1998, the Immigration Court denied this "Motion to Reopen to Reconsider". That decision was not served on Plaintiff, and it was served by mail to the P.O. Box address which was specified in the Notice of Appearance and on the Motion to Reopen as Placeres' address of record. Placeres and Ivan failed to inform Plaintiff that a decision had been rendered on this Motion to Reopen, or that it had been denied.

33. The immigration law in effect at that time provided that an adjustment of status petition for an alien who was already in deportation proceedings could only be filed with the immigration court having jurisdiction over the alien's case and not with the local INS office. In addition the immigration law at the time provided clearly that a denial of a motion for a change in venue was not a basis for reopening an *in absentia* order for deportation.

34. On July 20, 1999, Plaintiff was issued employment authorization by the INS, based on his pending adjustment of status application, and was scheduled for an adjustment of status interview at 26 Federal Plaza, New York NY on February 2, 2000. Plaintiff's belief of that Ivan's statements to him, that Placeres had "taken care of" the *in absentia* removal

order, was thus entirely reasonable. Plaintiff subsequently obtained employment as a chemical engineer with Howmet Castings, Inc., in New Jersey.

35. In September 1999, Plaintiff and his wife went to the Entra office to prepare for the pending adjustment of status interview, scheduled for February 2, 2000 at 26 Federal Plaza, New York, New York. On that date, Ivan introduced Plaintiff to Jbara and informed Plaintiff that he (Jbara) would be dealing with Plaintiff's immigration case henceforth. Defendant Jbara worked from the same office as Defendant Entra and Plaintiff's immigration file was given to Jbara by Ivan and/or Entra America. There was no written retainer agreement between Plaintiff and Jbara, and Jbara deliberately and intentionally led Plaintiff to believe that he (Jbara) was acting as an agent and/or employee of Ivan and Entra at all times. At no time did Placeres, Entra and/or Ivan seek Plaintiff's consent to hand over Plaintiff's immigration file to Jbara. At this meeting, the *in absentia* order was not discussed, as Plaintiff believed it had been vacated. Ivan had instructed Jbara not to tell Plaintiff that this order of removal had not been vacated.

36. Jbara was aware at all times that Ivan had performed all of the legal work on Plaintiff's case, and that Placeres did not and had never worked at the Entra America office. Jbara also knew that Ivan had prepared all of Plaintiff's immigration papers, forged Placeres' signature to Plaintiff's immigration papers, and that Ivan and not Placeres rented the P.O. Box which was listed on Plaintiff's immigration papers. Jbara never revealed any of this information to Plaintiff, in part because he was employed by Ivan and also because he relied on Ivan to refer immigration clients to him so that he could build his own immigration practice.

37. On February 2, 2000, Plaintiff and his wife were interviewed at 26 Federal Plaza by an INS adjudications official in connection with Plaintiff's adjustment of status application. Plaintiff and his wife were represented by Jbara at this interview. At the conclusion of the interview, the immigration officer granted Plaintiff's adjustment of status application and put a stamp to that effect in Plaintiff's passport, and told him that he would receive

his green card in the mail.

38. Prior to this interview, Jbara had informed Plaintiff that it was unnecessary to refer to the *in absentia* order of removal, as it had already been vacated. Plaintiff assumed that the removal order had been vacated and also that Jbara's advice that it was unnecessary to refer to it was correct.

39. On or about April 2000, Plaintiff contacted Defendant Jbara by telephone and told him that he needed to travel to Venezuela immediately because his mother was severely ill, and that he wanted to be sure that he could re-enter the US with the adjustment of status approval stamp in his passport. Plaintiff had not received his green card in the mail. Defendant Jbara informed Plaintiff that the *in absentia* order was still in effect and the stamp on his passport would therefore be insufficient to gain reentry to the U.S. This was the first time that Plaintiff was made aware that the *in absentia* order had not been vacated.

40. On or about May 10, 2000 Plaintiff and Defendant Jbara returned to 26 Federal Plaza and informed the INS adjudications officer, Mr. Shaw, that Plaintiff was subject to an Order of Removal. The stamp on Plaintiff's passport was then marked "voided without prejudice" and the immigration officer advised Plaintiff that the case would be transferred to New Jersey, where he could re-file his adjustment of status application. While at 26 Federal Plaza and waiting for this meeting with Officer Shaw, Jbara consistently called Ivan at the Entra office, asking her advice and instruction on how to proceed.

41. On or about May 2000, Plaintiff paid $500 to Entra America for Jbara to file a motion with the Immigration Court to vacate the *in absentia* order. Jbara failed to file this motion, but repeatedly informed Plaintiff that such a motion was pending and that he was awaiting a decision. Plaintiff was not made aware until July 2002, when he retained different immigration counsel, that a motion to reopen had never been filed.

42. On September 5, 2000, Jbara wrote to District Counsel (the legal representatives of the INS in immigration court proceedings), requesting that the District Counsel consent to a

motion to reopen the 1998 removal proceedings and vacate the *in absentia* removal order, so that Plaintiff could adjust his status in the Immigration Court. A copy of this letter is annexed hereto as Exhibit G. This letter provided no explanation for Plaintiff's failure to appear in Immigration Court, stated no legal basis on which such a Motion might be granted, and gave no legal argument in support of the Motion. In particular, the Motion and the letter failed to mention a possible claim of ineffective assistance of counsel on the part of Placeres as a legal basis for the Motion to Reopen to be granted. In addition, Defendant Jbara failed to advise Plaintiff that such a claim of ineffective assistance of counsel was the only legally acceptable excuse for his failure to appear in Immigration Court on February 2, 1998.

43. Jbara failed to advise Plaintiff regarding a possible claim of ineffective assistance of counsel due to a conflict of interest arising from his business and professional affiliations with the other Defendants. Jbara also failed to advise Plaintiff that he (Jbara) had such a conflict of interest.

44. Between May 2000 and July 2002, Plaintiff repeatedly and consistently called Jbara and Ivan at the Entra America phone number to ascertain the status of the Motion to Reopen. Ivan did not respond directly to any of these calls, and Jbara consistently informed Plaintiff that the Motion to Reopen was under consideration by the Immigration Court. Jbara knew at the time that these statements were not true. Ivan knew or should have known that Jbara was making these misrepresentations to Plaintiff regarding the status of the Motion to Reopen, and took no steps to prevent it.

45. Defendants took no other steps to vacate the *in absentia* order.

46. On December 26, 2001, Ivan purported to dissolve Entra America. On December 28, 2001, notwithstanding it's apparent earlier dissolution, Ivan entered into a purchase agreement with Jbara for the sale of Entra America, Inc., for the sum of $200,000 (Exhibit H).

47. On or about July 2002 Plaintiff retained new immigration counsel, who retrieved

Plaintiff's immigration file from Jbara. Subsequently, Plaintiff was made aware that Jbara had not filed any Motion to reopen his removal proceedings, that Placeres had never maintained an office address at either 1133 Broadway, New York NY, or at P.O. Box 7806, FDR Station, New York NY 10150-1915, that all of the papers which had been filed with the Immigration Court on his behalf - namely, the 1998 Motion for a change in venue and the 1998 Motion to reopen the removal proceedings - lacked any legal merit, and that his adjustment of status petition had been filed in a forum which lacked jurisdiction to adjudicate it.

48. On or about January 2003, Plaintiff filed a complaint against both Placeres and Jbara with the Departmental Disciplinary Committee of the Supreme Court, Appellate Division, First Judicial Department ("the Committee"), alleging essentially the same facts as are alleged herein. Both Placeres and Jbara filed a response to these complaints.

49. After an investigation, the complaint against Jbara was dismissed by the Committee upon a finding that he (Jbara) had properly represented Plaintiff in his adjustment of status proceeding in 2002. However, the gravamen of Plaintiff's complaint against Jbara was not that Jbara had improperly represented Plaintiff in his adjustment of status proceeding (which in any event took place in 2000, and not 2002), but that instead Jbara had failed to properly advise Plaintiff of the legal requirements for filing a motion to reopen an *in absentia* order of removal and also that he had failed to advise Plaintiff that he (Jbara) was constrained by conflict of interest from raising an ineffective assistance of counsel claim against Placeres, or from informing Plaintiff that it was Ivan who had performed all of the work on Plaintiff's immigration case and that Placeres had never been employed by or worked with Ivan or Entra America.

50. In his response to the Committee, Placeres denied that he had ever worked with Ivan, and insisted that it was he and not Ivan who had performed all of the legal work on Plaintiff's immigration case. Placeres also stated in this response that he used the P.O. Box address on all of his immigration court papers because the Post Office regularly failed to deliver

mail properly to his actual office address, 2710 Broadway, New York, New York 10025. However, this P.O. Box had all along been rented by Ivan, and not by Placeres. In this response, Placeres also stated that he was no longer in contact with Ivan and that he believed she had moved to Massachusetts. Placeres knew that these statements were untrue, as he was in regular contact with Ivan and knew that she continued to reside at 2510 Yates Avenue, Bronx New York.

51. As part of his response to the Committee, Placeres submitted copies of some of Plaintiff's immigration documents, which he (Placeres) had received from Jbara and/or Ivan when Plaintiff filed his complaint with the Committee. Some of these documents had been altered by Placeres (Exhibit C), by changing the phone number on these forms to reflect his (Placeres') own office telephone number instead of the Entra America phone number, as appeared on the forms which were had been filed with the INS (Exhibit D).

52. In January 2004, the Committee dismissed without prejudice Plaintiff's complaint against Placeres, because of the pending (instant) litigation.

53. In January 2003, Plaintiff filed a Motion with the Immigration Court to reopen the removal proceedings and vacate the *in absentia* removal order. Plaintiff alleged in this Motion that the ineffective assistance of his former attorneys and legal representatives was the reason he failed to appear in immigration court on February 2, 1998, and that the fraud of these same legal representatives had tolled the 180-day period within which to file such a motion. The Immigration Court denied this motion, for lack of timeliness and other procedural reasons, and Plaintiff appealed this decision to the Board of Immigration Appeals ("BIA").

54. In June 2003, while his appeal with the BIA was pending, Plaintiff was laid off from his job with Howmet Castings, because he no longer had employment authorization.

55. On February 18, 2004, also while his appeal with the BIA was pending, Plaintiff was apprehended at his home by officials of the Department of Homeland Security Bureau of Immigration and Customs Enforcement (BICE) and placed in an immigration detention

facility in Jamaica, Queens, pending his deportation to Venezuela. Plaintiff then suffered a severe emotional breakdown, as a result of which he had to be placed in a secure psychiatric facility located in the Holliswood Psychiatric Center, Holliswood, New York. Plaintiff remained in Holliswood until May 16, 2004. During some of this period of confinement, Plaintiff was heavily medicated and tranquilized, and at one point kept alone in a secure room under twenty-four hour suicide watch.

56. Shortly after his apprehension, Plaintiff obtained a stay of deportation from the US District Court for the Southern District of New York, Borges v. McElroy, 04 CV 01878 (DC). That stay of deportation was continued upon the consent of the government, until a stay of removal was issued - also on the consent of the government - by the Third Circuit Court of Appeals. Nonetheless, and despite this stay of removal, BICE officials refused to agree to release Plaintiff from BICE custody. Plaintiff repeatedly sought release from custody, both administratively from BICE officials as well as through three habeas corpus petitions which he filed. BICE consistently claimed that Plaintiff was a flight risk, and thus refused to release him from custody, solely by reference to Plaintiff's failure to appear for the February 2, 1998 removal hearing and his failure to reveal the existence of the *in absentia* removal order at his adjustment of status interview in 2000. As a result, Plaintiff remained in BICE custody from March of 2004 until April 1, 2005, a total of four hundred and ten days.

57. On March 1, 2004, the BIA denied Plaintiff's appeal of the Immigration Court decision, relying in large part on the (false) statements made by Placeres in his response to the Committee, Plaintiff then sought review of the Board of Immigration Appeals decision by way of Petition for Review to the Third Circuit Court of Appeals.

58. On or about July 2004, while Plaintiff was still in BICE custody and fighting his removal to Venezuela, Placeres and Ivan entered into an agreement whereby Placeres would assume from Ivan the rental of the P.O. Box listed on Plaintiff's immigration forms as Placeres' address, in order to create the (false) impression that Placeres had been the

renter of this P.O. Box all along. Placeres and Ivan took this step when they each knew that Plaintiff was in immigration custody and fighting deportation to Venezuela, and they did so with the express intention of hiding the true facts of their own involvement in Plaintiff's immigration case and in hopes that Plaintiff would lose his immigration case and be deported to Venezuela, thus effectively insulating them from liability in the instant case and otherwise.

59. On November 23, 2004, Plaintiff made a motion to the Court of Appeals, asking that the administrative record be supplemented with the altered documents which Placeres had filed with the Disciplinary Committee, as additional and further evidence of fraud. The Court of Appeals granted this motion.

60. On March 30, 2005, the Court of Appeals granted Plaintiff's Petition for Review, and remanded the case back to the Board of Immigration Appeals, with an instruction to consider the newly-filed evidence of fraud, and if it found that there had been fraud, to reopen the case and vacate the *in absentia* order.

61. On or about April 4, 2005, Plaintiff was released from BICE custody, as part of an agreement resolving a Habeas Corpus petition which he had filed in order to secure his release, Borges v. Bowman, CV-05-1142 (CBA), and as a direct result of the favorable outcome of the Petition For Review.

62. On November 4, 2005, the Board of Immigration Appeals remanded the case back to the Immigration Judge for a hearing, in accordance with the terms of the Court of Appeals decision. On January 6, 2006, the Immigration Judge granted Plaintiff's Motion to Reopen, finding that he "must reopen the instant matter' (Exhibit I).

63. Neither Placeres nor Jbara or Ivan ever contacted the Immigration Court, the Board of Immigration Appeals or the Court of Appeals to dispute any of the Plaintiff's allegations against them.

64. The acts of Placeres and Ivan complained of herein continued through July 2004, when Placeres and Ivan conspired to change the rental of the P.O. Box from Ivan to Placeres, in

order to hide their responsibility for the Plaintiff's immigration problems.

65. As a result of the failure of Defendants Entra, Ivan and Placeres to properly represent him, Plaintiff became subject to an *in absentia* order of removal.

66. As a result of the failure of Defendants Placeres and Jbara to properly represent Plaintiff, Plaintiff was not advised that he was still subject to an *in absentia* order of deportation and was subsequently unable to travel to Venezuela for either of his parents' funerals, which caused him emotional distress.

67. As a result of the failure of Defendants to properly represent Plaintiff, Plaintiff missed the filing deadlines within which to file a motion to vacate an *in absentia* order of removal, which unnecessarily protracted his immigration case and which caused him emotional distress and which cost him tens of thousands of dollars in additional legal fees.

68. As a result of the actions of all Defendants, Plaintiff was unable to renew his employment authorization and was terminated from his position as an engineer, and was denied further job opportunities.

69. As a result of the actions of all Defendants, Plaintiff was detained in immigration custody for fourteen months, placed in imminent danger of deportation to Venezuela. This detention and threat of imminent deportation caused Plaintiff to suffer severe emotional distress, requiring involuntary hospitalization and treatment with psycho tropic medication. Plaintiff continues to suffer from emotional distress.

70. As a result of the actions of all Defendants, Plaintiff has had to retain another attorney and incur significant legal fees in order to resolve his immigration status.

AS AND FOR A FIRST CAUSE OF ACTION:

NEGLIGENCE

71. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 70 as if set forth more fully herein.

72. Each of the Defendants recklessly and negligently gave wrong and misleading information to the Plaintiff regarding his immigration case which they knew and should

have known to be incorrect and false.

73. Each of the Defendants negligently permitted, encouraged and facilitated the other Defendants to provide wrong and misleading information to Plaintiff regarding the status of his immigration case.

74. Defendant Ivan negligently informed Plaintiff that he did not need to appear at the Immigration Court for his scheduled removal hearing, negligently failed to file a proper motion to vacate the *in absentia* order of removal, negligently failed to inform Plaintiff that the *in absentia* order had not been vacated, negligently failed to file his adjustment of status petition in the correct forum, negligently failed to inform Plaintiff that she was not qualified to perform the services which she was performing, and negligently gave Plaintiff's immigration file to an attorney (Jbara) whom she knew or should have known was constrained by conflict of interest from providing Plaintiff with proper advice and information regarding the status of his immigration case and whom she knew was not qualified to represent Plaintiff.

75. Defendant Placeres claims that he represented Plaintiff in his immigration proceedings as described herein. To the extent that he claims to have provided representation to Plaintiff, Placeres must be held responsible for his negligent failures to file a proper motion to vacate the *in absentia* order of removal, to inform Plaintiff that the *in absentia* order had not been vacated, to file his adjustment of status petition in the correct forum, to advise him on how to vacate the *in absentia* order of removal, and to inform Plaintiff that he was not qualified to perform the services which he was performing,

76. Defendant Jbara knew or should have known that Defendants Entra America, Ivan and Placeres had given Plaintiff incorrect, and misleading information and advice about the status of his immigration case. Defendant Jbara failed to inform Plaintiff of this wrong and misleading information and advice.

77. In attempting to insulate his co-defendants from liability, Defendant Jbara recklessly and negligently failed to properly advise Plaintiff on the proper way to vacate the *in absentia*

Order of removal.

78. The actions of the Defendants complained of herein constituted negligence.

79. As a result of this negligence, Plaintiff has sustained damage in the amount of $750,000 by each of the Defendants.

AS AND FOR A SECOND CAUSE OF ACTION:

LEGAL MALPRACTICE

80. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 79 as if set forth more fully herein.

81. Defendant Placeres and Jbara had a duty to exercise the ordinary reasonable care and knowledge commonly possessed by a member of the legal profession in fully attending to Plaintiff's interests.

82. Defendants Placeres and Jbara failed to exercise such care, ordinary and reasonable skill, diligence and knowledge during the course of their representation of Plaintiff. In particular, Defendants caused Plaintiff to become subject to an *in absentia* order of removal, failed to properly move to vacate it, failed to advise Plaintiff on the proper steps required for this order to be vacated, failed to advise Plaintiff that he was subject to this order of removal, failed to file Plaintiff's adjustment of status application in a timely manner and in the proper forum, and did not attempt to remedy that failure.

83. As a result of the actions and inactions of these Defendants complained of herein, Plaintiff remains in imminent danger of deportation to Venezuela; has been terminated from his position as a chemical engineer; has been denied other job opportunities; was detained in a secure jail-like immigration setting for over fourteen months, has suffered and continues to suffer severe emotional distress, has suffered loss of reputation; has incurred legal fees; and other damages.

84. As a result of this malpractice by Defendants, Plaintiff has sustained damage in the amount of $1,250,000 by each of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION:

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

94. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 93 as if set forth more fully herein.

95. The actions of all Defendants complained of herein constituted negligent infliction of emotional distress against the Plaintiff.

96. As a result of the said emotional distress, Plaintiff has been damaged in the amount of $1,500,000 by each of the Defendants.

AS AND FOR A SIXTH CAUSE OF ACTION:

FRAUD

97. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 96 as if set forth more fully herein.

98. Defendants made statements to Plaintiff regarding his immigration status, which they knew to be false, with the intent that Plaintiff rely on said statements. Defendants also failed to inform Plaintiff about the status of his immigration case with the specific intention of misleading Plaintiff about his immigration case.

99. Defendants Entra and/or Ivan deliberately misrepresented to Plaintiff that Defendant Placeres would be performing legal work on Plaintiff's behalf, knowing that this misrepresentation was false.

100. Defendants also took affirmative steps to hide from Plaintiff the true status of his immigration case, by concealing from him that he remained subject to an *in absentia* order of removal, by telling him that it had been vacated, and by then telling him that it was the subject of a pending Motion to Reopen at the Immigration Court. Defendants knew at the time they made these statements that they were not true, yet they made them with the express intention of hiding from Plaintiff the true facts of his immigration case.

101. Plaintiff did rely on said false statements and did not pursue legal actions available to him that would have ameliorated his immigration status, to his detriment and damage.

102. Defendants also took affirmative steps to undermine Plaintiff's claims before the

Immigration Court and the Board of Immigration Appeals. Defendant Placeres did this by, *inter alia*, filing false statements and submitting forged documents to the Disciplinary Committee, which false statements and forged documents were relied upon by the BIA in denying Plaintiff's appeal and by BICE as justification for denying Plaintiff's requests for release from custody. Defendant Ivan did this by assisting Placeres in making such false statements, by providing him with a copy of Plaintiff's file, and by transferring the rental of the P.O. Box referred to herein to Placeres' name in July 2004. Jbara did this by, *inter alia,* knowing of the false statements and fraudulent conduct of the other defendants and failing to inform Plaintiff that such statements and conduct were false and fraudulent.

103. Such fraudulent conduct on the part of all Defendants continued at least until July 2004.

104. Such fraud was perpetrated upon the Plaintiff by each of the Defendants intentionally, willingly and with full knowledge.

105. As a result of the said fraudulent conduct of each of the Defendants, Plaintiff has been damaged in the amount of $1,200,000 by each of the Defendants.

AS AND FOR A SEVENTH CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

106. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 106 as if set forth more fully herein.

107. Defendants Jbara, Placeres and Ivan were representing Plaintiff regarding his immigration status and, as such, maintained a fiduciary relationship with the Plaintiff with an attendant high standard of care that included, among other things, a duty of complete disclosure.

108. The failure of the Defendants to inform Plaintiff of the true facts of his immigration case, and the deliberate and intentional deceit of Plaintiff by the Defendants regarding the true facts of his case, constituted a breach of the fiduciary duty owed to Plaintiff by all Defendants.

109. As a result of the said breach of fiduciary duty, Plaintiff has been damaged in the amount of $500,000 by each of the Defendants.

AS AND FOR AN EIGHTH CAUSE OF ACTION:

STATUTORY TREBLE DAMAGES

110. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 110 as if set forth more fully herein.

111. New York Judiciary Law § 487 provides in pertinent part:

An attorney or counselor who:

(1) is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the Court, or any party; or

(2) willfully delays his client's suit with a view to his own gain; or willfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

112. Defendants Placeres and Jbara engaged in a course of conduct, calculated to intentionally deceive Plaintiff about the status of his immigration case, conspired and colluded with each other and Defendants Entra and Ivan to deceive Plaintiff about the status of his immigration case and to give Plaintiff wrong and misleading legal advice, in order to protect themselves and each other, and each of the Defendants herein consented to this deceit, conspiracy and collusion by the other.

113. That pursuant to Judiciary Law § 487, Defendants Placeres and Jbara are in violation of said law and each should forfeit treble damages to the Plaintiff herein.

AS AND FOR A NINTH CAUSE OF ACTION:

PUNITIVE DAMAGES

114. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 113 as if set forth more fully herein.

115. The actions of each of the Defendants herein was intentional or grossly negligent, reckless and wanton and with conscious disregard for the rights of Plaintiff.

116. Each of the Defendants is liable to the Plaintiff for punitive damages on each of the causes of action alleged above.

AS AND FOR A NINTH CAUSE OF ACTION:

DAMAGES PURSUANT TO GENERAL BUSINESS LAW SECTION 349(h)

117. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 116 as if set forth more fully herein.

118. General Business Law Section 349(a) states as follows: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

119. General Business Law Section 349(h) provides as follows:

> [a]ny person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff."

120. Each of the three Defendants - Ivan, Placeres and Jbara - have wilfully and knowingly violated this section by engaging in the deceptive acts and practices complained of herein. Plaintiff therefore requests that he be awarded damages against each Defendant in the amount of $1,000 for a breach of this section of the law, as well as reasonable attorneys fees.

AS AND FOR AN ELEVENTH CAUSE OF ACTION:

PIERCING OF THE CORPORATE VEIL

121. Plaintiff repeats and realleges the allegations as set forth in Paragraphs 1 to 120 as if set forth more fully herein.

122. Defendant Ivan was the sole owner of Defendant Entra America and exercised complete

dominion and control over the corporation with respect to the transactions alleged herein.

123. Defendant Ivan used this corporation to perpetrate the acts alleged herein against Plaintiff. All of the fees paid for representation in this case were paid to Entra America. Defendant Ivan claimed, through the diplomas in the Entra America office and the Entra America business card which bore Placers' name as attorney, that Entra America employed Placeres. Ivan should therefore not be allowed to hide behind the corporate shield of Entra America, and she should be held personally liable for any wrongdoing attributable to Entra America.

WHEREFORE Plaintiff demands judgment against each of the Defendants in an amount of $750,000 on the first cause of action; $1,250,000 on the second cause of action; $500,000 on the third cause of action; $250,000 on the fourth cause of action; $1,500,000 on the fifth cause of action; $1,200,000 on the sixth cause of action along with costs and disbursements, $500,000 on the seventh cause of action, statutory treble damages pursuant to Judiciary Law § 487on the eighth cause of action, punitive damages on the ninth cause of action, $1000 each and attorney fees on the tenth cause of action, piercing of the corporate veil of Defendant Entra America, and attorney fees in connection with this action generally, and for such other and further relief as this Court shall deem just and appropriate.

Dated: New York, New York
January 26, 2006

By:
Paul O'Dwyer, Esq.
Attorney for Plaintiff
134 West 26 Street, Suite 902
New York NY 10001
(646) 230-7444

VERIFICATION

Jose Borges, being duly sworn, deposes and says:

I am the Plaintiff in the within action. I have read the annexed Complaint and I know the contents thereof, and the same is true to my knowledge, except those matters which are stated to be alleged on information and belief and as to those matters I believe them to be true.

Dated: New York, New York
January 26, 2006

Jose Borges

Sworn to before me,
a notary, on this the 26 day of
January, 2006:

PAUL O'DWYER
Notary Public, State of New York
No. 02OD6037266
Qualified in New York County
Commission Expires Feb. 14, 20~~06~~

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
---x
JOSE BORGES,

Plaintiff,

- against -

ENTRA AMERICA, INCORPORATED,
ADELA IVAN, ALFRED PLACERES and
JAMAL JBARA

Defendants.
---X

Index No. 114016/03

VERIFIED ANSWER

Defendant, JAMAL JBARA, by his attorneys, Segal, Tesser, & Ryan, LLP, as and for his answer to plaintiff's verified complaint, states as follows:

1. Defendant JAMAL JBARA (hereinafter referred to "JBARA") denies knowledge and information sufficient to form a belief as to the accuracy of the allegations set forth in the paragraphs enumerated as 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 38, 44, 71, and 72 of the Verified Complaint.

2. JBARA admits the allegations set forth in the paragraph enumerated as 3 of the Verified Complaint.

3. JBARA denies the allegations set forth in paragraphs 7, 30, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 47, 48, 49, 50, 51, 52, 55, 56, 57, 59, 60, 61, 63, 64, 65, 67, 68, 74, 75, 77, 78, 81, 82, 84 and 85 of the Verified Complaint.

4. The paragraphs enumerated as 45, 53, 58, 62, 66, 69, 76, 79 and 83 of the Verified Complaint do not require a responsive pleading. Nevertheless, JBARA repeats and restates his response to each of the allegations referred to and incorporated in said paragraphs.

5. The allegations set forth in paragraphs 46, 54 and 80 of the Verified Complaint requires no response as to legal conclusions; but JBARA denies knowledge and information sufficient to form a belief as to the accuracy of the allegations concerning Placeres and states that he represented plaintiff at plaintiff's adjustment of status interview on February 2, 2000 and in a subsequent Joint Motion to Reopen.

6. JBARA denies the allegations set forth in paragraph 70 and 73 of the Verified Complaint, except denies knowledge and information sufficient to form a belief as to the accuracy of the allegations concerning the other defendants.

FIRST AFFIRMATIVE DEFENSE

7. Any claims based upon the alleged negligence, alleged legal malpractice, alleged negligent supervision, alleged intentional and negligent infliction of emotional distress, and alleged breach of fiduciary duty and alleged violation of New York Judiciary Law § 487 by JBARA is time barred by the applicable Statutes of Limitation.

SECOND AFFIRMATIVE DEFENSE

8. Any claims based upon alleged fraud are tortious in nature and are time barred by the applicable Statutes of Limitation.

THIRD AFFIRMATIVE DEFENSE

9. Any claims based upon the alleged breach of contract of JBARA is precluded by the statute of frauds.

FOURTH AFFIRMATIVE DEFENSE

10. All claims based upon alleged fraud and alleged violation of New York Judiciary Law § 487 are precluded for lack of specificity.

FIFTH AFFIRMATIVE DEFENSE

11. The instant action is frivolous and the demand for damages is arbitrary and capricious.

SIXTH AFFIRMATIVE DEFENSE

12. Plaintiff's claims for damages is grossly exaggerated, without any basis in fact, and upon information and belief, plaintiff's claim for damages is fraudulent.

SEVENTH AFFIRMATIVE DEFENSE

13. Plaintiff's claim must be dismissed for unclean hands and abuse of process.

WHEREFORE, DEFENDANTS request that the court enter judgment dismissing plaintiff's Verified Complaint in its entirety, imposing sanctions against plaintiff based upon the frivolous and baseless allegations of the Complaint pursuant to Section 130-1.1 of the New York Rules of Court (22 NYCRR 130-1.1) and granting JBARA such other and further relief, including costs and attorney's fees, which to this court is just and proper.

Date: New York, New York
January 26, 2004

SEGAL, TESSER, & RYAN, LLP
Attorneys for Defendants

By: ______________________
Lewis Tesser
509 Madison Avenue
New York, N.Y. 10022
(212) 754-9000

TO: Paul O'Dwyer, Esq.
Attorney for Plaintiff
134 West 26th Street
Suite 902
New York, NY 10001
(212) 230-7444

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Jamal Jbara, being duly sworn, says: I am one of the named Defendants in the within proceeding; I have read the foregoing VERIFIED ANSWER and know the contents thereof; the same is true to my own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Jamal Jbara

Sworn to before me this
26th day of January, 2004

Notary Public

GEORGE KONTOGIANNIS
Notary Public, State Of New York
No.02KO6081394
Qualified In Kings County
Commission Expires October 7, 20 06

EXHIBIT D

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Part 33

--X

JOSE BORGES,

Plaintiff, Ind. No.: 530TS2004

-against-

Cal. No.: 1 and 2 of 5/2/05

ENTRA AMERICA, INC., ADELA IVAN, ALFRED PLACERES, JAMAL JBARA,

Defendants.

--X

HON. ANIL C. SINGH, J.:

Papers	**Numbered**
Notice of Motion................................	1
Order to Show Cause..........................	
Cross-Motion....................................	2,3,4
Answering Affidavits........................	5
Reply...	
Exhibits...	
Other......memos of law......................	6,7

Defendant Jamal Jbara moves for an order dismissing the complaint against him. Plaintiff opposes the motion and cross-moves for an order compelling defendant to comply with plaintiff's discovery requests.

Plaintiff is an immigrant from Venezuela. He has been granted permanent resident status in the United States owing to his marriage with an American citizen on January 29, 1998. He has had a long, complex relationship with the agency formerly known as the Immigration and Naturalization Service ("INS"). This relationship was, initially, mediated by the representation of defendant Entra America, Inc., which is owned by defendant Adela Ivan and, allegedly, defendant Alfred Placeres. Defendant Jamal Jbara allegedly worked, or appeared to work, for Entra America, Inc.

Plaintiff in his complaint alleges that all defendants were negligent in the handling of his immigration case. With respect to defendant Jbara, plaintiff states that the latter represented him at his interview with the INS for adjustment of his status, failed to correct a material misstatement by plaintiff to the interviewer, failed to file a motion to reopen plaintiff's deportation proceedings and vacate the order of deportation, but represented to plaintiff that he had done so.

Defendant Jbara claims in his moving affidavit that plaintiff made the misstatement to the immigration officer entirely of his own choice and that Mr. Jbara had, in fact, advised him not to do so. He claims that the motion to reopen was already untimely at the point when he met plaintiff. He denies that he was an employee of Entra America at that time, but claims that he knew Ms. Ivan, the owner, socially, and that his representation of plaintiff was independent of Entra America.

Plaintiff disputes all these allegations. He claims that he was not warned of the consequences of misstatements made to the INS or corrected afterwards. He disputes Mr. Jbara's claim that he was not associated with Entra America, pointing out that there was no retainer agreement between them and that he was introduced to Mr. Jbara by Ms. Ivan.

Clearly, there are triable issues of fact, including but not limited to the relationship between plaintiff and Mr. Jbara and the latter's relationship to defendant Entra America. Defendant's motion for summary jdugment is denied.

Plaintiff's cross-motion for an order compelling defendant to comply with plaintiff's discovery demands is also denied. Plaintiff has already made such a motion, returnable December 8, 2004, which was withdrawn Mr. Jbara has complied with the demands, albeit by objecting to most of them and plaintiff does not specifically dispute the objections or offer further arguments why the responses are inadequate.

The foregoing constitutes the decision and order of the court.

Date: May 16, 2005
New York, New York

Anil C. Singh

EXHIBIT E

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 75

Index No. 530 TSN 2004
Motion No. 28 of 9/23/08

Jose Borges,
Plaintiff,
-against-

Entra America, Inc., Adela Ivan,
Alfred Placers and Kamal Jbara,
Defendants.

DECISION AND ORDER

Hon. Arlene Bluth,
Judge of the Civil Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of defendant Jbara's motion for summary judgment:

Papers	Numbered
Plaintiff's Notice of motion and Affidavits/Affirmations Annexed.........................	1
Memo of Law in Opposition to motion	2
Reply...	3

Upon the foregoing cited papers and after oral argument, defendant Jbara's motion for summary judgment is denied.

In this action, plaintiff alleges that defendants were negligent in the handling of his immigration case. The complaint asserts causes of action for negligence, legal malpractice, breach of contract, negligent supervision (only against the non-moving defendants), negligent and intentional infliction of emotional distress, fraud, breach of fiduciary duty, statutory treble damages pursuant to Judiciary Law §487 and punitive damages.

Plaintiff claims that when Jbara, an attorney, represented him at his Immigration and Naturalization Service (INS) interview concerning the adjustment of his status, Jbara failed to advise plaintiff that he was subject to an order of deportation (which was issued on default), failed to correct plaintiff's material misstatement to the INS interviewer (wherein he denied being subject to a deportation order), and failed to file a motion to reopen that deportation proceeding in order to vacate the order of deportation, among other things.

This is Jbara's second motion for summary judgment; by decision and order dated May 16, 2005, Judge Singh denied his first summary judgment motion It is well settled that a second (or successive) summary judgment motion is proper only when there is newly discovered evidence or other "sufficient cause" (*Public Service Mutual Insurance Company v Windsor Place Corp.*, 238 AD2d 142, 655 NYS2d 947 [1st Dept 1997]).

Jbara has not offered any newly discovered evidence in support of this motion. Instead, he states that Judge Singh denied the first motion "on the basis that possible issues of fact remained as to the relationship between the parties", but that the instant motion is "based solely on the threshold issue of causation on plaintiff's malpractice claim, an issue where no material facts remain undisputed" (Jbara, moving affidavit, para. 21). As such, plaintiff concedes that he is making the same motion again based on a new theory; this does not constitute "sufficient cause". In fact, Jbara has repeated the same arguments here as he asserted in his first motion, specifically that (1) plaintiff made the misstatement to the INS officer entirely by his own choice and that Jbara had advised him not to do so, (2) the motion to reopen plaintiff's deportation proceedings was already untimely when Jbara met plaintiff, and (3) Jbara was not an employee of defendant Entra America (see Judge Singh's decision and order, page 2). Despite Jbara's attempt to narrow the scope of Judge Singh's order, Judge Singh found triable issues of fact, *including but not limited to* the relationship between plaintiff and Jbara and Jbara's relationship to the other defendants.

In response to plaintiff's assertion that all of the evidence which Jbara relies on in this motion was available (and in his possession) when the first motion was made, Jbara's counsel states only that since the first summary judgment motion, plaintiff and Jbara were deposed. Notably, he does not point to any piece of newly discovered evidence, but instead merely notes that the parties' deposition have been conducted.

Counsel's statement that he "requested and received the Court's permission to make the instant motion" at a June 4, 2008 status conference (Tesser reply affirmation, para. 3) does not relieve him of the obligation of demonstrating that there is newly discovered evidence or sufficient cause for this second motion. Apparently, on June 4, 2008, Jbara's attorney mentioned to the TAP judge at a bench conference that he wanted to make a second summary judgment motion based on new evidence and the judge suggested that he do so. This remark does not constitute a ruling that such a motion would be proper.

Finally, to the extent that Jbara submits the decision of the United States Court of Appeals for the Third Circuit which granted plaintiff's petition for review, this decision does not constitute newly discovered evidence. As plaintiff indicates, this decision was previously cited in Jbara's brief in support of his first summary judgment motion (see Memo of Law dated April 28, 2005, p. 8). In any event, a decision is not "evidence".

Jbara has not offered any new evidence or other sufficient reason which would justify a second motion for summary judgment. Additionally, plaintiff has demonstrated that there are triable issues of fact which can only be resolved at trial (for example, whether Jbara advised plaintiff that he was subject to a deportation order, and whether Jbara led plaintiff to make false statements to an INS officer). Accordingly, Jbara's second motion for summary judgment dismissing the complaint as against him is denied.

This is the Decision and Order of the Court.

Dated: December 11, 2008
New York, New York

Arlene P. Bluth
Judge of the Civil Court

asn by [illegible] on 12/12/08

ARLENE P. BLUTH
JUDGE, CIVIL COURT